

Remarks

Reconsideration and further examination of the above-identified patent application in light of the present Amendment, Reply, and Remarks is respectfully requested.

A Petition for a three (3) month extension of time is enclosed along with the required extension fee.

Authorization is hereby given to charge any deficiency in fees or any other fees in connection with the above-identified patent application to our Deposit Account No. 23-0920.

The specification has been amended to delete reference characters (part numbers) 94 (second occurrence) in paragraph [0030] and more specifically to delete "of a shower 94" as per the request of the Primary Examiner. The undersigned attorney thanks the Primary Examiner for pointing out these typographical errors so that they can be corrected. The errors were made through inadvertence and mistake without intent to deceive.

A Substitute Specification is enclosed in accordance with 37 CFR §1.125(b). The substitute specification contains no new matter.

Claims 1-13 were pending prior to this Amendment.

Claims 2, 3, 11, and 12 have been canceled.

Claims 1, 5, and 13 have been amended to more particularly point out and distinguish applicants' invention over the references of record. Antecedent basis and support for the amended matter in the claims are found in the specification, original claims and drawings.

Claims 1, 4, 5-10, and 13 are presently pending for the consideration of the Primary Examiner.

Claim 1 as currently amended pertains to a composition for simulating metal for use in plumbing supplier, consisting of: polybutylene terephthalate (PBT) and acrylonitrile butadiene styrene (ABS). Significantly, the composition of PBT and ABS cooperates with each other to simulate metal. Desirably, the composition consists of plumbing supplies without metal or sanitary products without metal. Furthermore, the composition has a ratio of PBT to ABS ranging from about 1:1.9 to about 1:8.2.

In contrast to applicant's composition as recited in applicant's amended claim 1, Mugge et al. US Patent No. 5,258,213 ("Mugge") requires (1) polyamide, (2) polyester, and (3) an adhesion promoter intermediate layer (col. 2, lines 21 et seq.). Furthermore, Mugge pertains to foodstuff packaging films and multilayer tubes in the automobile industry (col. 6, lines 65-68). Mugge does not pertain to plumbing supplies or sanitary products, let alone plumbing supplies without metal or sanitary products without metal as recited in applicant's amended claim 1. Furthermore, Mugge does not have a ratio of PBT to ABS ranging from about 1:1.9 to about 1:8.2, as required in applicant's amended claim 1.

Tamura et al. U.S. Patent No. 6,235,408 ("Tamura") is not germane to applicant's composition as recited in applicant's amended claim 1 because Tamura requires a resin and a laminate material made of metal (col. 2, lines 35-37). Tamura does not disclose a composition consisting of plumbing supplies without metal or sanitary products without metal, as specified in applicant's amended claim 1. Furthermore, Tamura does not disclose a composition having both PBT and ABS, let alone having a ratio of PBT to ABS ranging from about 1:1.9 to about 1:8.2, as set forth in applicant's amended claim 1.

Schnell U.S. Patent Publication No. 2003/0077409 A1 ("Schnell") is very different than applicant's composition of applicant's amended claim 1. Schnell is directed to front end modules and door modules for cars [0045], seats, dashboards, and instrument panels [0050]. Tamura does not disclose a composition consisting of plumbing supplies or sanitary products, as indicated in applicant's amended claim 1. Tamura also does not disclose a composition having both PBT and ABS, let alone having a ratio of PBT to ABS ranging from about 1:1.9 to about 1:8.2, as provided in applicant's amended claim 1.

Japanese Publication No. 10-267163 discloses ABS or PBT with a filler of metals and an inorganic substance. Significantly, Japanese Publication No. 10-267163 does not disclose a composition without metal as required in applicant's amended claim 1. Furthermore, Japanese Publication No. 10-267163 does not disclose a composition having both PBT and ABS, let alone having a ratio of PBT to ABS ranging from about 1:1.9 to about 1:8.2, as recited in applicant's amended claim 1.

Chan U.S. Patent Publication No. 2005/0145725 A1 (“Chan”) does not cure the defects of Japanese Publication No. 10-267163, Mugge, Tamura, and Schnell. Chan was published over 1 ½ years after the filing date of applicant’s subject application. Moreover, Chan does not disclose a composition having both PBT and ABS, let alone having a ratio of PBT to ABS ranging from about 1:1.9 to about 1:8.2, as set forth in applicant’s amended claim 1.

A prior patent is a reference only for what it clearly discloses or suggests; it is improper use of a patent as a reference to modify it to that which it does not suggest; *In re Hummer*, 113 USPQ 66 (CCPA 1957). See also *In re Stencil*, 4 USPQ2d 1071, 1073 (Fed. Cir. 1987).

“It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of the other parts necessary to the full appreciation of what such references fairly suggests to one of ordinary skill in the art.” *In re Wesslau*, 147 USPQ 391, 393 (CCPA 1965).

A piece meal reconstruction of prior art patents in light of the applicant’s disclosure shall not be a basis for obviousness. *In re Kamm & Young*, 172 USPQ 298, 301-302 (CCPA 1972).

Applicant’s claim 4 is directly dependent upon applicant’s amended claim 1 and, therefore, requires all the structural features and limitations of applicant’s amended claim 1 as well as requires a ratio of PBT to ABS of about 1:8. These structural features and limitations are not found in Mugge, Tamura, Schnell, Japanese Publication No. 10-267163, and Chan.

Applicant’s amended independent claim 5 is directed to simulated metal plumbing supplies consisting of polybutylene terephthalate (PBT) and acrylonitrile butadiene styrene (ABS). Advantageously, the PBT and ABS cooperate with each other to provide simulated metal plumbing supplies consisting of a composition without and in the absence of metal. Desirably, the simulated metal plumbing supplies have a ratio of PBT to ABS ranging from about 1:1.9 to about 1:8.2.

Significantly, Japanese Publication No. 10-267163 does not disclose a composition without metal as required in applicant’s amended independent claim 5. Furthermore, Japanese Publication No. 10-267163 does not disclose a composition

having both PBT and ABS, let alone having a ratio of PBT to ABS ranging from about 1:1.9 to about 1:8.2, as recited in applicant's amended independent claim 5.

Most of the numerous defects concerning Chan, Mugge, Tamura, and Schnell, as discussed above with respect to applicant's amended claim 1, are also applicable to applicant's amended independent claim 5.

It is submitted that it would not be an obvious matter of choice for one skilled in the art to reconstruct Japanese Publication No. 10-267163, Chan, Mugge, Tamura, and Schnell to achieve applicant's invention as recited in applicant's claims without the benefit of hindsight of applicant's disclosure and such is clearly improper. As the Federal Circuit Court of Appeals (formerly the U.S. Court of Customs and Patent Appeals) has emphasized, the Primary Examiner must be ever alert not to read obviousness into an application on the basis of applicant's own statements and must further view the prior art without reading into that art applicant's teachings, *In re Sponnoble*, 405 F. 2d 578, 160 USPQ 273 (CCPA 1969). It is not enough for a valid rejection of the patent application to view the prior art in retrospect; once applicant's disclosure is known, the prior art should be viewed by itself to see if it fairly discloses what the applicant has done, *In re Schaffer*, 220 F. 2d 476, 108 USPQ 326 (CCPA 1956).

Applicant's claims 6-10 and 13 are directly dependent upon applicant's amended independent claim 5 and, thereby, include all the structural features and limitations of applicant's amended independent claim 5. Furthermore, applicant's claims 6-10 and 13 also include other structural features and limitations, which in combinations with the structural features and limitations of applicant's amended claim 5, are not fairly taught or suggested in Japanese Publication No. 10-267163, Chan, Mugge, Tamura, and Schnell.

In summary, applicant's composition, as recited in the amended and remaining claims, provides very useful and user friendly simulated metal plumbing supplies, which is not anticipated or obvious from Japanese Publication No. 10-267163, Chan, Mugge, Tamura, and Schnell.

Inasmuch as the preceding amendment complies with the Primary Examiner's requests, cures the Primary Examiner's objections and patentably distinguishes applicant's remaining claims over the cited prior art references of record, it is respectfully

submitted that the above-identified application is now in condition for allowance. A Notice of Allowance is respectfully requested.

The Primary Examiner is invited and encouraged to contact the undersigned attorney in order to expedite this application to allowance, if the preceding does not already place the above-identified application in condition for allowance.

Respectfully submitted,

Thomas W. Tolpin

Thomas W. Tolpin  
Registration Number 27,600  
Attorney for Applicant

Address:

Welsh & Katz, Ltd.  
22nd Floor  
120 South Riverside Plaza  
Chicago, IL 60606

Phone: (312) 655-1500